In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 908

DAUPHIN DEPOSIT TRUST COMPANY AND CLEMENT FILIPPELLI, AS TREASURER OF DAUPHIN DEPOSIT TRUST COMPANY, PETITIONERS

v.

UNITED STATES OF AMERICA AND VICTOR A. FRANCHI, SPECIAL AGENT, INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This petition involves the enforcement of three administrative summonses (R. 15a–17a)[1] issued by a Special Agent of the Internal Revenue Service under authority of Section 7602 of the Internal Revenue Code of 1954 (26 U.S.C. 7602), requiring a bank to produce for examination its records concerning the accounts and financial transactions of two individuals, Morris and Rebecca Weiner, and two business entities, Orweco Frocks, Inc., and Quaker Dress Company, a partnership. The district court ordered petitioners to

[1] "R." refers to petitioner's Appendix in the court of appeals.

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comply with the summonses by making available to the Internal Revenue Service the items specifically listed in exhibits (denominated "A–1", "A–2", and "A–3") attached to an affidavit of Special Agent Franchi, filed with the enforcement petition (R. 9a–14a, 146a). The court of appeals modified the order in one particular, which it thought overly broad, and otherwise affirmed[2] (Pet. 14). The result below is correct, and not in conflict with any decision of this Court or any other court. There is no basis for further review.

1. Petitioner ignores the record in contending (Pet. 6–7) that the decision below conflicts with *United States* v. *Powell*, 379 U.S. 48, 57–58, where this Court said that the Commissioner "must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession."

As to the first two requirements Special Agent Franchi stated in his affidavit (R. 7a–8a) that he is investigating the tax returns for the years 1961 through 1964 of Orweco Frocks, Inc., and the joint returns of Morris and Rebecca Weiner, that Morris Weiner is a partner in Quaker Dress Company, and

[2] The order of the district court (R. 146a), as modified (Pet. 14), requires the bank to make available its records pertaining to Morris and Rebecca Weiner and the partnership and corporation for the years 1961 through 1964, as follows (R. 9a–14a): signature cards, ledger sheets of checking accounts, microfilm copies of specified checks, ledger sheets of loan accounts, records of holdings (by the Weiners and the corporation) of the bank's stock, safe deposit box records, records of the purchase and sale of securities, and records of purchases of treasurer's checks.

that Orweco was during the years in question the sole customer of Quaker. Franchi testified that Morris Weiner is president and owner of one-third of the stock of Orweco (R. 31a–32a). The affidavit also noted that the normal statute of limitations, which would have run with respect to the two earlier years, had been extended by written agreements signed by the taxpayers under investigation. This plain showing of a legitimate purpose and relevancy was not significantly challenged during cross-examination (R. 29a–31a, 35a).

As to the third requirement of *Powell*, petitioners assert (Pet. 7) that Franchi conceded "that it [the Internal Revenue Service] did have the original copies of information which it had obtained from the taxpayer." The record shows (R. 32a, 33a, 35a) that at the outset of the investigation Mr. Weiner had shown Franchi his bank statements and some cancelled checks, but that many cancelled checks were missing. Obviously Franchi and the Internal Revenue Service do not now have even those records once shown by Weiner, or any of the other records now sought, and most of the material sought has never even been seen.

2. The district court found, and the court of appeals agreed, that petitioners failed to prove what has been their chief contention, both here (Pet. 7–9) and in the district court (see, *e.g.*, R. 136a–137a, 140a–141a, 142a, 144a): that it would be unduly burdensome and expensive for the bank to find and make available the records called for by the summonses (R. 166a–167a; Pet. 13). The district court was "not

impressed by the estimates of expense supplied by Mr. Filippelli" and found that those estimates were based on "the most expensive approach" to complying with the summonses (R. 166a). *United States* v. *Third Northwestern National Bank*, 102 F. Supp. 879 (D. Minn.), and *United States* v. *First National Bank of Fort Smith, Arkansas*, 173 F. Supp. 716 (W.D. Ark.), on which petitioners rely (Pet. 7–8), involved significantly different summonses (see R. 160a–163a). Moreover, in those cases the respective banks had cooperated in an initial search of their records, whereas here the bank refused even to ascertain whether the taxpayers under investigation have accounts with the bank (R. 155a, 160a–165a). As the court of appeals observed (Pet. 13), the bank persisted on appeal in arguing that it might be obliged to conduct extensive searches in eighteen branch offices although a "simple check of signature cards would have removed this contention from the realm of the merely possible."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MITCHELL ROGOVIN,
Assistant Attorney General.

JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys.

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